Supreme Court, U.S.
FILED
07-28 MAY 08 2007
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

JOHN R. VINTILLA, authorized representative of Lucretia G. Vintilla, deceased, PETITIONER

v.

SAFECO INSURANCE COMPANY, aka SAFECO INSURANCE COMPANY OF ILLINOIS

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the arbitrary and capricious payment by an Insurer of a disputed claim for damages constituted a breach of the automobile accident liability policy and violated the Insured's Due Process rights under the Fifth and Fourteenth Amendments to the Constitution of the United States?

2. Whether the arbitrary and capricious payment by the Insurer of a controverted damage claim violated public policy?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding are those set forth in the caption of the case, to wit: John R. Vintilla, authorized representative of Lucretia G. Vintilla, deceased, and Safeco Insurance Company of Illinois.

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The opinions of the District Court and the Court of Appeals are unreported and appear in the appendix.

JURISDICTION

The Order of the Court of Appeals was entered on March 2, 2007. A timely petition for rehearing was denied on March 26, 2007. The petition for certiorari was timely filed. The jurisdiction of the Court was invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL STATUTORY PROVISIONS AND FEDERAL RULE INVOLVED

The Fifth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF JURISDICTION

On March 5, 2005, Petitioner filed a federal question complaint in the United States District Court against Safeco Insurance Company, aka Safeco Insurance Company of Illinois to redress the violation of Petitioner's Fifth and Fourteenth Amendment rights under the Constitution of the United States and pursuant to 28 U.S.C. Section 1331. Petitioner also filed a motion for summary judgment. Respondent Safeco also filed a motion for summary judgment.

STATEMENT OF THE CASE

On February 23, 2006, the District Court entered an Order and Opinion denying petitioner's motion for summary judgment and granting the respondent's motion for summary judgment.

Petitioner appealed the District Court's Order to the Sixth Circuit Court of Appeals. On March 2, 2007, the lower court affirmed the district court's ruling in a short Order wherein it states: "...this court concludes that issuance of a panel opinion would not serve any jurisprudential purpose. Thus, we affirm the district court's thorough and well-reasoned decision for the reason stated in the opinion."

Petitioner's claim arises from a motor vehicle collision that occurred on December 10, 2000.

The undisputed facts taken from Petitioner's verified complaint and the evidentiary material annexed show that the Petitioner and other driver involved were both traveling south on Wooster Road in Rocky River, Ohio. As Petitioner turned right from the west (right hand) curb lane to enter the parking lot of her church, the right rear passenger side of her vehicle was struck by the front of the other vehicle. Officer Bird of the Rocky River Police Department appeared at the scene after the accident happened and after the vehicles had been moved to clear the entrance to the parking lot. Officer Bird first talked to the other driver and then he declared Petitioner at fault for the accident to which Petitioner protested vigorously. There were no independent witnesses to the accident. Officer Bird did not give her a citation but told her that she would be hearing from a Magistrate. Instead of a response from a Magistrate, Petitioner was served with a Summons in Lieu of Warrant ordering her to appear in the Rocky River Municipal Court to plead to the charge she

violated Section 331.11(a) of the Traffic Code of Rocky River by not making her turn into the parking lot from as close as practicable to the right hand curb or edge of the roadway. The charge against the Petitioner was provoked by the sworn complaint filed by Officer Bird.

Petitioner appeared with Counsel in court on the morning of the trial date to defend against the complaint. Officer Bird approached her and said he was going to dismiss the complaint, and he did with the approval of the prosecutor. The other party did not file suit alleging that he suffered damages as a result of the Petitioner's negligence. He simply presented a claim for damages to Petitioner's insurer, respondent. The claim was paid forthwith.

On August 27, 2001, approximately five months after the complaint in the Rocky River court had been dismissed on March 1, 2001, respondent declared Petitioner at fault for the accident and canceled the insurance policy in force, and subsequently issued a substitute policy at an increase in the premium.

REASONS FOR GRANTING THE PETITION

The Court of Appeals has failed and/or refused to decide important federal questions submitted to it for review in disregard of the relevant and established decisions of this Court. The lower court has so far departed from the usual course of judicial proceedings as to call for exercise of the Court's supervisory powers.

ARGUMENT AND LAW

LEGALLY RESPONSIBLE FOR AUTOMOBILE ACCIDENT DAMAGES

Inasmuch as the lower court's decision was based entirely on the "thorough and well-reasoned decision of the district court," petitioner's arguments will refer to and deal with the opinion of the district court. To support its decision, the district court cited Ohio law and relied principally on the case of *Marginean v. All-State Insurance Co.*, 18 Ohio St. 3d 345 (1985) which held:

> Where a contract of insurance provides that the insurer may as it deems appropriate, settle any claim or action brought against the insured, a cause of action alleging breach of insurer's duty of good faith will not lie where the insurer has settled such claim within the monetary limits of the insured's policy.
>
> The critical and controlling provision of the insurance policy relative to respondent's obligation regarding the accident of December 10, 2000, states as follows:
>
> We will pay damages for bodily injury or property damage for which the insured becomes legally responsible because of an auto accident. We will settle or defend as we consider appropriate any claim or suit asking damages (emphasis added).

The case involves Respondent's over zealous and precipitous action in arrogating unto itself the authority and power of a judicial tribunal in finding Petitioner at fault for the automobile accident of December 10, 2000, and in

determining the Petitioner is legally responsible for the damages caused by the accident.

The language of the insurance policy that governs the issue in this case is clear and unequivocal. Respondent is obligated to pay damages if and when the insured becomes legally responsible for the payment of damages.

That is the crux of the issue before the court. The threshold question that must be answered is whether Respondent has the authority to decide that the insured was at fault and therefore legally responsible for the payment of damages? Respondent made the decision arbitrarily and ex parte that the insured was at fault. There is no language in the policy that permits such action by the Respondent. In any event, Respondent did not adduce any appropriate authority to support its decision to declare that the Petitioner was legally responsible for the payment of damages to the other party.

The Petitioner from the outset, insisted that she was not at fault. No civil action had been filed by the other party claiming that Petitioner caused the damages he incurred. Respondent rushed to judgment and arbitrarily decided that Petitioner was at fault and legally responsible for the other party's damages in conscious disregard of Petitioner's legitimate protest of innocence. To be liable for the payment of damages is to be legally liable, liable for an amount determined by the trier of the facts in a particular case; liability imposed in a definite sum by a final judgment. Respondent could not pay a claim that was legitimately contested by the insured and that has not been resolved judicially. One of the foundations of our liberties is the presumption that a person is innocent until proven guilty in a court of law.

The fundamental controversy in *Marginean* and in the instant case involves the interpretation of the language of the policy. In the former case, the language is "legally responsible." The District Court committed the identical errors as *Marginean* by deliberately disregarding the meaning and application of the critical language of the policy "legally responsible."

The judicial determination of the term "legally responsible" is indispensable to a proper resolution of the controversy, absent an agreement between the parties to settle the matter. *Marginean* serves no legitimate purpose as legal precedent - it is a total nullity and should be stricken from the body of the law.

The evidence shows and the trial court found that Respondent's arbitrary and capricious conduct in adjudging Petitioner at fault and responsible for the damages was not in dispute, and that Respondent settled the damage claim without the knowledge and consent of Petitioner. Respondent has found support for the settlement in the language of the policy that states the latter may "settle or defend as we consider appropriate." The essence of the "settle and defend" provision is to protect the insured. The question that arises in this connection is whether the settlement which Respondent made without the consent of Petitioner was in the best interest of the insured or whether it was prejudicial and damaging to the insured.

JUSTICIABILITY

The issue presented is whether under the facts and circumstances of the case, Respondent's action in faulting the Petitioner for the accident and declaring her legally responsible for the payment of damages to the other party is a justiciable matter to be decided by a judicial tribunal.

In the instant case, we have a justiciable issue which is the kind of controversy that courts traditionally resolve - whether Petitioner was at fault and legally responsible for the payment of damages.

Many decisions of this Court have unequivocally reaffirmed the holding in *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed 60, I Cranch 137 (1803) that "[I]t is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret the rule." See *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090 (1974).

The gravity of Respondent's action in paying the damage claim is that Respondent became the Judge and jury - it usurped the authority and function of our courts under our system of justice.

DUE PROCESS

The central issue in the case is whether Respondent had the authority to declare Petitioner at fault for the accident and to pay damages caused by the accident to the other party in light of Petitioner's persistent protest of innocence. The issue is not whether Respondent had sufficient evidence to conclude the petitioner was the guilty party. The issue is whether under the facts and circumstances of the case, Petitioner was entitled to a judicial hearing to determine whether she was liable for the payment of damages. Once Petitioner claimed she was not at fault, the matter became controversial and her liability could be determined only by a judicial tribunal. In other words, Petitioner could be found at fault and liable for the payment of damages only in accordance with the right to constitutional due process which requires that every litigant have a fair trial before an impartial

judge. *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968).

The District Court found that the material facts were not genuinely in dispute. The material facts in evidence are as follows: Respondent arbitrarily and ex parte found Petitioner at fault for the accident and held that Petitioner was legally responsible for the damages caused by the accident and paid the damage claim of the other party.

The Ohio Constitution and the Fourteenth Amendment of the United States Constitution specifically guarantee the right to contract. *City of Akron v. Public Utilities Commission of Ohio.* 126 Ohio St. 333, 185 N.E. 415 (1933).

The finding of guilt or negligence in a contested automobile accident case is the sole function of a court wherein the accused is granted the right to defend against the charge or allegation, to face his accuser, bring witnesses in his behalf and to cross-examine witnesses against him in a fair trial. This process must be satisfied before the accused may be declared guilty or liable for the payment of damages resulting from the accident. In paying the claim, Respondent violated Petitioner's rights under the policy and also the right to have a judicial determination of liability as mandated by the Due Process Clause of the Constitution.

The law governing the issue is well settled. On the record, Petitioner is entitled to a summary judgment as a matter of law.

PUBLIC POLICY

It is customary under our system of jurisprudence to encourage reverence for the rule of law and respect for our

courts. This standard prohibits a person from taking the law into his own hands. The improper conduct flowing from the contract in the present case, in violation of public policy, is Respondent's usurpation of the function of the court in denying Petitioner her due process rights to defend against the damage claim in the court.

The declaration of the Sixth Circuit Court of Appeals in *L'Orange v. Medical Protective Co.*, 394 F. 2d 57, 60 (1968), is especially enlightening and persuasive on the doctrine of public policy.

> In Ohio, the Courts have held that an insurance policy is to be treated as a voluntary contract which is subject to the public policy of the state.

The court expounded on the subject of public policy as follows.

> The term "public policy" is not susceptible of precise definition. The Supreme Court of Ohio has stated that "public policy is that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against public good..." *Porter v. The Trustees of the Cincinnati Southern Railway*, 96 Ohio St 29, 33-34, 117 N.E., 20. This court has held that the test of whether an insurance contract is void against public policy in Ohio is whether "it is injurious to the public or contravenes some established interest of society." *McCullough Transfer Co., v. Virginia Surety Co., Inc.*, 213 F. 2d 440, 443. When contract litigation requires Ohio courts to determine public policy, the courts look to these sources. Sometimes such public policy is declared by Constitution; it abides only in the customs and conventions of the people in

their clear consciousness and conviction of what is naturally and inherently just and right between man and man. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. Kinney (1916) Id. At 60.

CONCLUSION

The petition for a writ of certiorari should be granted and the Court should reverse the lower court's order for the reasons set forth herein.

Respectfully submitted,

JOHN R. VINTILLA

CERTIFICATE OF SERVICE

I hereby certify that three copies of the petition for a writ of certiorati were served upon the following by mailing true copies by First Class, U.S. mail, postage prepaid on the _____ day of May, 2006:

Timothy J. Fitzgerald
Gallagher, Sharp, Fulton & Norman
Bulkley Building
7th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115

JOHN R. VINTILLA
Counsel for Petitioner

APPENDIX A

No. 06-3476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUCRETIA G. VINTILLA,	)	FILED MARCH 2, 2007 LEONARD GREEN, CLERK
Plaintiff-Appellant,	)	
v.	)	On Appeal from the United States District Court for the Northern District of Ohio.
SAFECO INSURANCE COMPANY,	)	
Defendant-Appellees.	)	

Before: KENNEDY, BATCHELDER, and CLAY, Circuit Judges.

PER CURIAM. Lucretia G. Vintilla appeals the district court's grant of summary judgment in favor of defendant Safeco Insurance Company and denial of her own summary judgment motion. After reviewing the record, the parties' briefs, and the applicable law, this court concludes that issuance of a panel opinion would not serve any jurisprudential purpose. Thus, we affirm the district court's thorough and well-reasoned decision for the reasons stated within that opinion.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

APPENDIX B

No. 06-3476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUCRETIA G. VINTILLA, *Plaintiff-Appellant,* v. SAFECO INSURANCE COMPANY *Defendant-Appellees.*	)	FILED MARCH 26, 2007 LEONARD GREEN, CLERK ORDER

Before: KENNEDY, BATCHELDER and CLAY, Circuit Judges.

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

/ s / Leonard Green
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
FEBRUARY 28, 2006
CLERK, U.S. DISTRICT
COURT
NORTHERN DISTRICT
OF OHIO - CLEVELAND

LUCRETIA G. VINTILLA,	)	CASE NO. 1:05
	)	CV666
	)	
Plaintiff	)	
	)	JUDGE
vs.	)	CHRISTOPHER
	)	A. BOYKO
	)	
	)	
SAFECO INSURANCE COMPANY	)	OPINION AND
	)	ORDER
Defendants	)	

This matter is before the Court on Plaintiff's and Defendant's Motions for Summary Judgment. Viewing the facts of this case and all reasonable inferences in favor of Plaintiff on Defendant's Motion, and in favor of Defendant on Plaintiff's Motion, this Court finds there is no genuine issue for trial. Therefore, the Court denies Plaintiff's Motion for

Summary Judgment and grants Summary Judgment in favor of Defendant Safeco Insurance Company.

I. FACTUAL BACKGROUND

Plaintiff's claim stems from a motor vehicle collision that occurred on December 10, 2000 in Rocky River, Ohio. The undisputed facts, taken from Plaintiff's Complaint, indicate Plaintiff and the other driver involved were both traveling south on Wooster Road in Rocky River. As Plaintiff turned right to enter the parking lot of her church, the passenger side of her vehicle was struck by the front driver's side of the other vehicle. Officer Bird of the Rocky River Police Department responded to the scene where he determined, after speaking to both Plaintiff and the other driver involved, Plaintiff had caused the accident. Plaintiff received a Summons in Lieu of Warrant ordering her to appear in Rocky River Municipal Court to answer to the charge she violated Section 331.11(a) of the Traffic Code of Rocky River by not making her turn "as close as practicable to the right hand curb or edge of roadway."[1]

On the morning of the trial date, March 1, 2001, Officer Bird dismissed his complaint upon verifying Plaintiff's insurance company (Defendant in this case) had compensated the other driver involved in the accident.[2]

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[1] Section 331.11 of the City of Rocky River's traffic code reads in pertinent part: The driver of a vehicle intending to turn right into a private road or driveway, . . . from a public street or highway shall be governed by the following rule. (a) Approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of roadway. Rocky River, OH, Codified Ordinances, ch. 3, ti. 5, § 331.11(a) (2005)

[2] No civil suit was ever filed against Plaintiff or her insurance company to recover damages resulting from the accident of December 10, 2000.

Subsequently, Plaintiff received a letter dated August 27, 2001, from Defendant Safeco Insurance Company of Illinois (hereinafter Defendant or Defendant Safeco) advising her that her automobile insurance policy would be non-renewed on October 1, 2001, due to the at-fault accident of December 10, 2001.[3] Plaintiff protested the non-renewal successfully, and was issued a substitute policy.[4]

Plaintiff unsuccessfully sued Officer Bird and the City of Rocky River for violating her constitutional right to due process by "arbitrarily usurp[ing] the function of a judicial tribunal and improperly pronounc[ing] the plaintiff 'at fault' for the accident." *See Vintilla v. City of Rocky River*, No. 02-2291 (Def.'s Ex. D at p. 5.) This court determined the fact "[t]hat Officer Bird disagreed with [Plaintiff's] assessment of who caused the accident does not render his investigation, the issuance of a citation to her or the criminal proceeding that was dismissed, a violation of due process." *Id.* at 6.

Plaintiff is now before this Court alleging, in her Complaint, Defendant breached their contract of insurance by settling the other driver's damages claim despite "no suit ha[ving] been filed in court by the opposing party to establish . . . that Plaintiff was legally responsible for the damages" and, in doing so, Defendant violated her right to due process. (Pl.'s Compl. at ¶¶ 8-11.) Despite procedural irregularities

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[3] Plaintiff misstates the contents of the August 27, 2001 letter (Pl.'s Ex. 6.) The letter stated two reasons for the non-renewal: the accident of December 10, 2000 and a backing accident on January 2, 2000. In addition, Plaintiff states in her Complaint that the "reason given by the defendant for the non-renewal of the policy was that Plaintiff was **at fault** for the accident of December 10, 2000[,]" (emphasis added), when in actuality the letter simply lists the accidents as the reason for non-renewal without assigning fault.

[4] Plaintiff alleges this substitute policy was issued with a substantial increase in premium but has presented no information or evidence to support this.

within Plaintiff's prosecution of her case, this Court is considering the merits of Plaintiff's Motion for Summary Judgment. Defendant has also filed a Motion for Summary Judgment.

II. STANDARDS OF REVIEW

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Coletex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). A fact is not material unless it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 248 (1986). An opponent of a Motion for Summary Judgment may not rely on the mere allegations of the complaint, but must set forth specific facts showing a genuine issue for trial. *Id.* When no reasonable jury could return a verdict for the non-moving party, no genuine issue exists for trial. *Id.* However, in evaluating a Motion for Summary Judgment, the court must draw all inferences from the facts in the light most favorable to the non-moving party. *Gen. Elec. Co. v. G. Siempelkamp GmbH & Co.*, 29 F.3d 1095, 1097-98 (6th Cir. 1994).

III. LAW AND ANALYSIS

For purposes of evaluating both parties' Motions for Summary Judgment, this Court construes the facts in the light most favorable to Plaintiff. However it is apparent from the brief and supporting materials that Defendant is entitled to judgment in its favor as a matter of law.

A. THE LAW ESTABLISHES THAT SETTLING CLAIMS WITHIN POLICY LIMITS IS A RIGHT RESERVED SOLELY TO THE INSURANCE COMPANY

In Plaintiff's first cause of action, she claims that Defendant "breached the contractual provisions of the insurance policy issued to the [P]laintiff, and its duty of good faith in its relationship with the [P]laintiff." (Pl.'s Compl. at ¶ 10.) She claims this breach resulted in a violation of Plaintiff's right to due process. (Pl.'s Compl. at ¶ 11.) Plaintiff states that both claims were the direct result of Defendant's paying the other driver's damages claim arising from the accident of December 10, 2000, "without just or reasonable cause . . . ."

Settled law in Ohio and elsewhere provides that:

> where a contract of insurance provides that the insurer may, as it deems appropriate, settle any claim or action brought against its insured, a cause of action alleging a breach of the insurer's duty of good faith will not lie where the insurer has settled such claim within the monetary limits of the insured's policy.

Marginian v. Allstate Ins. Co., 18 Ohio St. 3d 345, 348 (1985); *see also Hart v. Republic Mut. Ins. Co.*, 152 Ohio St. 185 (1949) (liability insurance company which reserves the right to settle, as it deems expedient, any claim against its insured is not liable to the insured for negligence in settling or refusing to settle such a claim) (syllabus by the court); *see also Fireman's Fund Ins. Co. v. Security Ins. Co. of Hartford*, 367 A.2d 864 (1976) (where potential loss is within liability policy limits, insurer has absolute right to control litigation); *see also Travelers Ins. Co. v. Hitchner*, 160 A.2d 521 (Law Div. 1960) (holding that an insurance company may settle

claims against its insured "at its option . . . without any interference on the part of the insured . . .").

Furthermore, the insurer's duty to defend its insured is generally held to include the right to settle rather than litigate claims. *See Farmer's Group, Inc. v. Trimble*, 691 P.2d 1138 (Colo. 1984); *see also Bankers Idem. Ins. Co. v. A.E.A. Co.*, 108 A.2d 464 (N.J. Super App. Div. 1954). Because the insured's interest in settlement generally conflicts with the company's interest in avoiding liability, many courts hold that the implied obligation of good faith and fair dealing requires an insurer to accept a reasonable settlement offer. *See Harris v. Standard Acc. & Ins. Co.*, 191 F.Supp. 538 (S.D.N.Y. 1961), *rev'd on other grounds*, 297 F.2d 627 (1961), *cert. denied*, 369 U.S. 843 (1962). Additionally, an insurance company may breach the covenant of good faith and fair dealing when it fails to properly investigate[5] its

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[5] Plaintiff states throughout her filings that both Officer Bird and Defendant's adjuster failed to properly investigate the accident when making their separate determinations that Plaintiff was at fault. Plaintiff admits that Officer Bird and Defendant's adjuster examined the physical damage to Plaintiff's and Defendant's vehicles, and the statements of both drivers that the other driver was behind Plaintiff prior to the accident. Despite Plaintiff's argument in her Complaint and Response, the fact that investigators did not witness the collision does not render their investigation improper. *See Vintilla v. Rocky River*, No. 02-22291 (Def.'s Ex. D at p. 6.)

Ohio laws governing insurance provide that "[t]he testimony of any insured seeking recovery from the insurer [under uninsured or underinsured motorist coverages] shall not constitute independent corroborative evidence, unless the testimony is supported by independent evidence." OHIO REVISED CODE ANN. § 3927.18(A)(3) (Anderson 2002). This common sense rule can be extended to these facts. Plaintiff offers no corroborating physical evidence, and no corroborating testimony from impartial witnesses, but only her unsupported, self-serving assertions that she made her right turn as close as practicable to the curb. This is hardly "abundant evidentiary material" as Plaintiff claims in her Response, nor does it set forth specific facts showing a genuine issue for trial.

Plaintiff further argues that her version of events is undisputed. This is inconsistent with the fact that Plaintiff was originally charged with

insured claim or where there is an unreasonable failure to make any efforts towards settlement of a claim. *Netzley v. Nationwide Mut. Ins. Co.*, 296 N.E.2d 550 (Ohio 2d Dist. Montgomery Cty. 1971).

There are numerous cases citing the proposition that an insurance company acts in bad faith if it **does not settle** claims against its insured, even if it settles frivolous or groundless claims. *See Wasserman v. Buckeye Union Cas. Co.*, 32 Ohio St. 2d 69 (1972) (quoting *Hart*, supra) (an insurance company "is liable to respond in damages to its insured if it fails to act in good faith with respect to the settlement of [a personal injury] claim; *see also Marginian*, 18 Ohio St. 3d at 347 (regardless whether such claims are frivolous or groundless, an insurance company acts in good faith when it settles such claims within its insured's policy limits). This Court has found no cases, and Plaintiff cites none in her motion nor in her response to Defendant's motion, holding that an insurance company that investigates and settles a claim against its insured within the insured's policy limits will be found to have acted in bad faith.

Plaintiff argues Defendant Safeco breached the insurance contract in settling the other driver's damages claim. As previously discussed, in considering the precise language of the policy, the Ohio Supreme Court has held, "there can be no set of circumstances" under which an insurance company could be held liable for breach of contract for settling a claim against its own insured within policy limits. *Marginian*, 18 Ohio St. 3d. at 347. Thus, what

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violating the traffic ordinances of Rocky River (whether or not that charge was dropped) and inconsistent with Plaintiff's own claim that gives rise to this litigation-the fact that Defendant found Plaintiff to be responsible for the accident and paid the damages claim of the other driver.

In light of the foregoing, this Court finds Defendant's investigation of the December 10, 2000 accident to be proper.

Plaintiff calls the "single question to be decided by the Court" (Pl.'s Resp. at p. 7) has already been decided - established law holds that the Defendant may settle claims against Plaintiff (its insured), even if Plaintiff instructs against doing so, without breaching the insurance contract.

B. THE CONTRACT LANGUAGE

1. The Policy Language Plaintiff Agreed to Expressly States Defendant May Settle Claims Against Its Insured as it See Fit

> The liability section of Plaintiff's automobile insurance policy reads:
>
> Coverage B-Property Damage Liability:
> We will pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages.

(Plaintiff's Ex. 10). As previously examined, an insurance company has a duty to settle claims when it determines through its own investigation that its insured is likely to be found liable for damages. In *Marginian*, the Ohio Supreme Court examined policy language substantially similar to the language above,[6] and found the insured's protestations of innocence and instructions not to settle any claims do not

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[6]Allstate will pay for all damages a person insured is legally obligated to pay - because of bodily injury or property damage . . . We will defend a person insured if sued as the result of a covered auto accident . . . and, may settle any claim or suit if we feel this is appropriate.

Marginian, at 346. Arguably, "will defend . . . may settle" makes the policy language examined in *Marginian* even less clear on the right of an insurance company to settle claims than the language of Plaintiff's policy, which uses "will settle or defend, as we consider appropriate[.]

alleviate this duty. *See Marginian*, 18 Ohio St. 3d at 347. The court found "that there can be no set of circumstances under which [the insured can succeed on his claim of bath faith against the insurance company for settling claims made against him within policy limits]." *Id.*

In *Marginian*, as here, Plaintiff instructed his insurance company not to pay any claims for damages arising out of two separate collisions, and then sued his insurance company when they paid damages claims of the other driver's involved in both. *Id.* at 345-46. Plaintiff in *Marginian* alleged he had been harmed by the insurance company's settlement in that he would be subject to increased premiums on "the subject insurance policy, or any other similar policy he may procure." *Id.* The Ohio Supreme Court held, despite the resultant increase in premium, the insurance company's right to settle was not contingent on its insured's approval. *Id.* at 348.

This is the same argument Plaintiff makes here. Plaintiff argues she was harmed by the increase in her auto insurance premium subsequent to claim settlement. Plaintiff has not shown that her premium increase was due solely or even primarily to the accident of December 10, 2000. The notice of non-renewal lists two separate accidents as the cause for non-renewal. (Pl.'s Ex. #6.) Even assuming *arguendo* that the accident of December 10, 2000, was the sole motivating cause of the premium increase, Plaintiff has not provided any evidence of the increase in her premium she complains about - precluding summary judgment in her favor. However, because Plaintiff cannot prevail under controlling law even if she had provided that evidence there is no need to allow her to proceed to trial on this issue.

2. The Policy Language "Legally Responsible" does not Change the Fact That the Law does not Require a Judicial Finding of Guilt or Liability Prior to Settlement

Despite the fact that settlement agreements are highly favored under Ohio law, *see Continental West Condominium Unit Owners Ass'n. v. Howard E. Ferguson, Inc.*, 74 Ohio St. 3d 501, 502 (1996), Plaintiff argues she be afforded the opportunity for a full trial before a determination is made that she is liable for damages resulting from the December 10, 2000, accident.[7] Plaintiff focuses her argument on the words "legally responsible" in the liability section of her insurance policy issued by Defendant. She argues in her Motion for Summary Judgment that "responsibility" equals "liability" which itself means "liable for an amount determined by the trier of the facts in particular cases; liability imposed in a definite sum by a final judgment against the insured." (Pl.'s Br. Opp'n Pl.'s Mot. for Summ. J. and Mot. for Summ. J. at p. 4.)

The policy language Plaintiff quotes says explicitly Defendant may "settle or defend **as we consider appropriate**, any claim or suit asking for . . . damages." (Pl.'s Ex. 10) (emphasis added). Plaintiff argues that despite the clarity of the policy language on this point, Defendant had

> no contractual obligation . . . to settle and pay a damage claim against the [P]laintiff . . . before it

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[7] "It is common sense that the law favors the prevention of litigation, by the compromise and settlement of controversies." *State ex rel. Wright v. Weyandt*, 50 Ohio St. 2d 194, 197 (1977). This was recognized as far back as 1863, when the Supreme Court of Ohio said "[t]he books abound with cases upon this subject; but they are all to the same purpose, and it cannot be necessary to cite further authorities in support of a doctrine so well settled." *White v. Brocaw*, 14 Ohio St. 339, 346-47 (1863). Furthermore, Ohio state statues provide that interest can be imposed from a date earlier than the date of judgment if the court determines that "the party required to pay the money failed to make a good faith effort to settle the case." *See* OHIO REV. CODE ANN. § 1343.03 (C) (Anderson Supp. 2005).

> had been judicially determined that the insured was liable for the payment of damages and the amount of damages had been ascertained and imposed in a definite sum by a final judgment against the [P]laintiff.

(Pl.'s Br. Opp'n Pl.'s Mot. for Summ. J. and Mot. for Summ. J. at pg. 3.)

As commonly understood, the term "settlement" means there was no judicial determination of liability and damages-that would be a verdict and judgment.[8] To do as Plaintiff urges would mean that the insurance company could settle a case only **after** a trial and judicial determination of liability and amount; this would defeat the purpose and impetus for settlement. Settlement is intended to conserve judicial resources and provide for more prompt resolution of disputes;[9] to do as Plaintiff suggests would do neither. It defies logic to argue that doing as Plaintiff urges would conserve judicial resources, and is contrary to common sense to argue that a claimant would settle for less than a judgment already in hand, enforceable by the court. Finally, explicit in the cases holding an insurance company may settle claims against its insureds without their permission, or even against their insured's wishes, is the proposition that the company

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[8] Black's defines settlement as "[a]n agreement ending a dispute or lawsuit." BLACK'S LAW DICTIONARY 1405 (8th ed. 2004). Merriam-Webster defines settle as "to conclude (a lawsuit) by agreement between parties usually out of court." *Merriam-Webster Online Dictionary, available at* http://www.m-2.com/dictionary/settle (last viewed Feb. 2, 2006). Therefore, under both a lay and legal interpretation, settlement does not mean judicial determination.

[9] The resolution of controversies by means of compromise and settlement results in a saving of time for the parties, the lawyers, and the courts, and is thus advantageous to judicial administration, and, in turn, to government as a whole . . . . [C]ourts today could not successfully cope with the volume of their dockets in the absence of settlement agreements.

Spercel v. Sterling Industries, Inc., 31 Ohio St. 2d 36, 38 (1972).

may make this decision itself, without judicial fact-finding or determination. *See Marginian*, 18 Ohio St. 3d 345; *Hart*, 152 Ohio St. 185. Therefore, settled law, as well as judicial policy and common sense, dictate Plaintiff cannot prevail on this issue.

C. PLAINTIFF'S CLAIM FOR VIOLATION OF HER DUE PROCESS RIGHTS MUST FAIL FOR LACK OF GOVERNMENT ACTION

Implicit within the cases holding that an insurance company may settle claims against their insured is the rule that, in doing so, the insurance company does not violate any rights guaranteed their insured by the federal or any state Constitutions.

1. Procedural Due Process

"Due process requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property." *See United States v. James Daniel Good Real Property,* 510, U.S. 43, 48 (1993). This issue has already been decided. In Plaintiff's suit against the City of Rocky River and Officer Bird, this Court stated clearly that "[P]laintiff cannot establish a procedural due process claim because she cannot show that the government deprived her of property, i.e., that the government increased her insurance premiums . . . ." *Vintilla v. City of Rocky River*, No. 02-2291 (Def.'s Ex. D at p. 7). Therefore, Plaintiff cannot prevail on any claim of procedural due process violation.

2. Substantive Due Process

Plaintiff's claim of a substantive due process violation must fail for the same reason outlined above. Plaintiff argues in her Motion for Summary Judgment the "increase in the

premium [of her auto insurance policy][10] . . . amounts to a taking of Plaintiff's property without due process of law." (Pl.'s Br. Opp'n Pl.'s Mot. for Summ. J. and Mot. for Summ. J. at pg. 5.) Plaintiff's claim of a substantive due process violation in a premium increase must fail because, again, there is no showing that the government deprived her of property.[11] Thus, viewing the facts in a light most favorable to Plaintiff any claim of substantive due process violation must also fail.

IV. CONCLUSION

Plaintiff has shown no material facts, viewed in a light most favorable to her, by which a verdict in her favor can be rendered under controlling law. Therefore, this Court overrules Plaintiff's Motion for Summary Judgment, and grants Summary Judgment in favor of Defendant Safeco Insurance Company of Illinois.

IT IS SO ORDERED

02/23/06
Date

S/ Christopher A. Boyko
Christopher A. Boyko
United States District Judge

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[10] Plaintiff never presented evidence showing the correlation between any increase in her premium and the accident of December 10, 2000.

[11] Generally, a substantive due process claim focuses on governmentally created legislation which deprives a citizen of a fundamental right guaranteed by the Constitution. *See* BLACK'S LAW DICTIONARY (8th ed. 2004).

APPENDIX D

AMENDMENT V

No person shall...be deprived of life, liberty, or property without due process of law;...

APPENDIX E

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.